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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.G., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

G038994

(Super. Ct. No. DL019758)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Joy W.

Markman, Judge. Affirmed.

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, Pamela Ratner Sobeck  
and David Delgado-Rucci, Deputy Attorneys General, for Plaintiff and Respondent.

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C.G. appeals from the juvenile court's order sustaining allegations he committed second degree robbery (Pen. Code, § 211; all further undesignated section references are to this code) and actively participated in a criminal street gang (§ 186.22, subd. (a)), with enhancements on the robbery count for personal use of a firearm (§ 12022.53, subd. (b)) and street terrorism (§ 186.22, subd. (b)(1)). Defendant challenges the sufficiency of the evidence to support the gang conviction and enhancement, and he contends section 654 required the juvenile court to stay sentencing on the gang conviction. As we explain, these contentions are without merit and we therefore affirm the juvenile court's order.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

Consistent with the standard of review, we set out the facts in the light most favorable to the judgment. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 229; see 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 364, p. 414 [“All of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity to be accepted by the trier of fact”].)

Two armed men approached Angelos Salamah on the sidewalk soon after he exited a Santa Ana convenience store before dawn on May 10, 2007. Salamah later identified defendant as one of the men. Defendant demanded Salamah's money and his accomplice, Rodrigo, known by his gang moniker, “Scooby,” demanded Salamah's belongings. Salamah fled into the street hoping a passing car would stop to help him, to no avail. The men twice threatened Salamah, “[G]ive us what you have or we're going to kill you.” Rodrigo held his gun to Salamah's head. Defendant, positioned behind Salamah, struck him on the head with his gun. Rodrigo snatched Salamah's gold chain from his neck, and defendant rifled through Salamah's back pocket, stealing \$80 and

other items. As Salamah's assailants decamped, one called out, "Yeah, we got what we wanted."

Salamah returned to the convenience store, where he sat down outside, dizzy from the blow to his head. A passerby who witnessed the attack called the police and comforted Salamah. Eventually, a car with a female driver pulled into the parking lot; Salamah believed her two passengers were his two attackers. The passerby agreed. Defendant exited the car and went into the store. His accomplice waited in the back seat of the car, spied Salamah, and, making the figure of a gun with his hand, pointed it to his head while looking at Salamah. Obtaining the license plate number of the car before it sped off, Salamah called the police again, who tracked defendant and Rodrigo to the driver's house, where they were arrested.

Santa Ana Police Officer Enrique Rubalcava testified as a gang expert. His testimony established Krazy Proud Criminals (KPC) was a criminal street gang and that numerous police contacts with Rodrigo and defendant demonstrated they were KPC members. Rubalcava explained that although the robbery took place in an area technically viewed as "neutral" by Santa Ana gang members, it bordered KPC territory. According to Rubalcava, KPC's primary activities included automobile theft and robberies, and the gang also was known for having its juvenile members carry firearms, to avoid stiffer sentences for adult members if they were apprehended with a weapon.

Rubalcava explained the importance to KPC and its members of committing violent crimes to gain "respect" from other gangs. "The respect is important . . . so that other gangs know that particular gang is, number 1, violent, and that they are active, so that rival gangs would think twice [before] com[ing] into the particular gang neighborhood . . . ." A reputation for violence also enables the gang to control "the citizens that live within th[e] area that the gang controls," by "deter[ring] them from reporting crimes to . . . police officers or becoming . . . witnesses." Because maintaining a reputation for violence is so crucial to the gang, the individual members who commit

violent crimes find their status within the gang enhanced. “The more violent the crime is, the more respect that they get from their own . . . members.” Accordingly, crimes of violence “elevate[] the respect of the . . . individual committing those crimes and also benefits . . . the gang itself.”

Because violence is so valued in the gang culture, contrary to what one might expect of a criminal hoping to avoid detection, KPC members broadcast their felonious misdeeds, spreading them by “[w]ord of mouth.” “Gang members brag about . . . crimes that they commit to their fellow gang members, who then return [*sic*] talk to other people. And it basically spreads out to other gangs.” Presented with a hypothetical mirroring the facts of the assault on Salamah, Rubalcava opined such an offense would “promote, further or assist the gang.”

Sustaining the allegations against defendant, the juvenile court found the maximum period of confinement if he were an adult would be 25 years and eight months. The court removed defendant from parental custody, placed him on supervised probation, and ordered him confined to juvenile hall for two years. Defendant now appeals.

## II

### DISCUSSION

#### A. *Substantial Evidence Supports the Gang Conviction and Enhancement*

Defendant challenges the sufficiency of the evidence to support his street terrorism conviction (§ 186.22, subd. (a)) and enhancement (§ 186.22, subd. (b)(1)).<sup>1</sup> Our review is limited. Where the record presents substantial evidence on which a reasonable trier of fact could find the defendant guilty, we may not disturb the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) “The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the

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<sup>1</sup> For ease of reference, we hereafter sometimes refer to these code sections as section 186.22(a) and 186.22(b)(1), respectively.

evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]" (People v. Kraft (2000) 23 Cal.4th 978, 1053-1054.) The same principles govern our review for substantial evidence supporting an enhancement. (People v. Gamez (1991) 235 Cal.App.3d 957, 977, disapproved on another point in People v. Gardeley (1996) 14 Cal.4th 605, 624, fn. 10.)

We turn first to defendant's gang conviction. As explained by the Supreme Court, "The substantive offense defined in section 186.22(a) has three elements. Active participation in a criminal street gang, in the sense of participation that is more than nominal or passive, is the first element . . . . The second element is 'knowledge that [the gang's] members engage in or have engaged in a pattern of criminal gang activity,' and the third element is that the person 'willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang.'" (People v. Lamas (2007) 42 Cal.4th 516, 523.)

Defendant argues the third element of the gang participation offense defined by section 186.22(a) calls for felonious criminal conduct that is gang related. The Attorney General does not advance a contrary position in this case, but in a plethora of recent cases has asserted the conduct need not be gang related; rather, the third element

is satisfied by any felonious criminal conduct a gang member commits even if unrelated to the gang. We rejected the Attorney General's position in *People v. Ramirez* (March 30, 2009, G038125) \_\_ Cal.App.4th \_\_ (*Ramirez*)), where we determined the Legislature intended in section 186.22(a) to proscribe as street terrorism conduct that is gang-related and not merely a personal endeavor.

The evidence here met that standard. The expert's testimony constitutes substantial evidence on which the trier of fact could conclude defendant's violent assault on Salamah was gang related. The expert explained that because violence is the coin by which gangs and gang members accumulate respect and spread terror in the community, a violent assault like the one on Salamah would enhance KPC's reputation and the perpetrator's reputation within KPC. An expert responding to hypothetical questions may properly testify concerning typical gang member motivations and intent, though this testimony touches on ultimate issues of motive and intent in the case. (*People v. Gonzalez* (2006) 38 Cal.4th 932, 946, fn. 3 [distinguishing *People v. Killebrew* (2002) 103 Cal.App.4th 644; prosecutor may elicit gang expert testimony through use of hypothetical questions]; accord, *People v. Carter* (2003) 30 Cal.4th 1166, 1194-1196; *People v. Garcia* (2007) 153 Cal.App.4th 1499, 1512-1513.) The issue of intent remains for the trier of fact to decide and ““the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]”” (*Kraft, supra*, 23 Cal.4th at pp. 1053-1054.) The trier of fact could reasonably conclude the perpetrators' odd boast, “Yeah, we got what we wanted,” served to announce the crime and foreshadowed further braggadocio, thereby fostering and spreading KPC's reputation for violence.

Defendant complains he did not wear a dark blue shirt or other article of clothing, flash hand signs, shout epithets, or otherwise announce his KPC membership during the assault. But the expert explained such overt indicia are not necessary to show a gang member harbors an intent to increase his and his gang's stature. Rather, because gang members have substantial incentive to brag about their offenses, word of mouth is a potent disseminator. Not only did defendant perpetrate the assault with another KPC member, Rodrigo aka "Scooby," the police apprehended him with a third associate, and the prosecutor established Scooby's two brothers were KPC members, providing ample evidence of a ready network to spread word of the crime and resulting terror in the community.

The trier of fact could also infer from the expert's testimony that the location of the crime reflected on defendant's intent. The expert explained gang members were generally attuned to location because gangs stake territorial claims. A gang member like defendant, who lived in a rival gang's territory, would be acutely aware of territorial boundaries, avoiding overt displays near his residence to avoid retaliation. Consequently, the trier of fact could reasonably infer acts defendant perpetrated elsewhere, particularly with a gang accomplice, were less likely to be personal and more likely intended to expand the gang's territorial claim, or at least demonstrate the gang was active and not to be trifled with. The expert explained committing violent acts had, in part, a defensive purpose, i.e., to forestall drive-by shootings in KPC territory because any gang considering undertaking such an incursion would know they would be met by armed, violent resistance. Because the record reveals abundant evidence of motive and opportunity on which the trier of fact could reasonably determine the robbery was gang related, defendant's challenge fails. And because the

evidence supports the conclusion the crime was gang related, the trier of fact could reasonably determine defendant committed the robbery “for the benefit of, at the direction of, or in association with” his gang, as required for the enhancement under section 186.22(b).

B. *Section 654 Does Not Require Sentencing on the Gang Conviction Be Stayed*

“Section 654 does not allow any multiple punishment, including either concurrent or consecutive sentences.” (*People v. Deloza* (1998) 18 Cal.4th 585, 592.) “If . . . a defendant suffers two convictions, punishment for one of which is precluded by section 654, that section requires the sentence for one conviction to be imposed, and the other imposed and then stayed.” (*Id.* at p. 591-592.) Defendant contends sentencing him on the gang conviction ran afoul of section 654 as multiple punishment for the underlying robbery offense, requiring a stay on the gang conviction and thereby reducing the maximum term of confinement if defendant were an adult from 25 years and 8 months to 25 years. We disagree.

As we explained in *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466 (*Herrera*), section 186.22(a) defines “a substantive offense whose gravamen is the *participation in the gang itself*.” Because “the defendant must necessarily have the intent and objective to actively participate in a criminal street gang,” section 186.22(a) “requires a separate intent and objective from the underlying felony committed on behalf of the gang.” (*Herrera*, at pp. 1467-1468.) As we noted, *People v. Latimer* (1993) 5 Cal.4th 1203 (*Latimer*), held section 654 applies to preclude multiple punishment for an indivisible course of conduct. (*Id.* at p. 1208.) But for conduct that is divisible according to the defendant’s intent and objective, *Latimer* also recognized multiple punishments may be imposed, however, where the defendant commits two crimes in pursuit of two independent, even if simultaneous, objectives. (*Ibid.*; see *Herrera*, at p. 1466; accord, *In re Jose P.* (2003) 106 Cal.App.4th 458, 468-471 (*Jose P.*).

*Jose P.* is precisely analogous to the present case. There, while “[t]he minor’s intent and objective in violating section 186.22(a) necessarily must have been participation in the gang itself,” his “intent and objective in committing the robbery was to take the property located in the home.” (*Jose P.*, *supra*, 106 Cal.App.4th at p. 471.) Accordingly, the court concluded: “While he may have pursued the two objectives simultaneously, the objectives were nevertheless independent of each other. Therefore, section 654 does not bar punishment for both the gang crime and the robbery.” (*Ibid.*) So it is here.

Defendant would have us apply what he sees is an alternate test for section 654’s application that depends *not* on whether the defendant harbors separate intents but whether he commits different acts. Defendant relies on *Neal v. State of California* (1960) 55 Cal.2d 11 (*Neal*), for this proposition. Even assuming *Neal* articulates a distinct section 654 test (but see *Latimer*, *supra*, 5 Cal.4th at p. 1207-1209 [deriving the indivisible course of conduct vs. separate intents and objectives test from *Neal*]), defendant’s argument is without merit.

Simply put, defendant’s participation in the gang was a separate act from the robbery he committed. While the robbery occurred in a discrete moment in time, defendant’s participation in the gang was a continuing offense occurring immediately before, during, and after the robbery. Accordingly, because the juvenile court could reasonably conclude defendant harbored distinct, albeit simultaneous intents in committing the robbery and street terrorism, *and* committed distinct acts in fulfilling the gravamen of each crime, section 654 does not apply. “[T]he purpose of section 654 [is] ‘to insure that a defendant’s punishment will be commensurate with his culpability.’” (*Latimer*, *supra*, 5 Cal.4th at p. 1211.) Based on defendant’s multiple acts, in addition to his multiple intents in committing separate crimes, the juvenile court reasonably concluded multiple punishment was warranted.

III

DISPOSITION

The juvenile court's order sustaining jurisdiction over defendant is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.